

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 909 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ADODIYA LALITABEN BACHUBHAI

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR UR BHATT AGP for Respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 02/07/96

ORAL JUDGEMENT

Petitioner Adodiya Lalitaben Bachubhai in this petition under article 226 of the Consitution of India has challenged the legality and validity of the order of her detention dated 9.1.1996 passed under section 3(1) of the Prevention of Anti Social Activities Act, (hereinafter referred to as the 'PASA Act') by the District Magistrate, Bhavnagar (hereinafter referred to as the 'detaining authority').

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on 25 offences registered against the detenu under the provisions of Bombay Prohibition Act and the statements of four witnesses, wherein they have alleged about the anti social activities of the detenu resulting fear in the minds of the public in general. On the basis of this material, the detaining authority has recorded a finding that the detenu is a bootlegger within the meaning of section 2(b) of the Act, and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed, which is under challenge in the present petition.

This petition is required to be allowed on the first contention advanced on behalf of the detenu by Miss Katchhavah learned advocate that in none of the cases registered against the detenu, the detenu is supplied with the vital documents like bail application and bail order passed in her favour. In support of her submission, Miss Katchhavah has relied on the decision of the Supreme Court in the case of M. Ahamedkutty vs. Union of India and Anr. reported in (1990)2 SCC p. 1. The Supreme Court has held that the bail application and the bail order constitute vital material and non-consideration thereof by the detaining authority or non-supply of copies thereof, would be violative of Article 22(5) of the Constitution of India and the continued detention will be illegal.

IN the instant case also as can be seen from the index of the documents supplied to the detenu, none of the 25 cases registered against the detenu, the detaining authority has supplied the bail application and the bail order passed in favour of detenu. By not supplying such vital documents, it is required to be held that the detenu should not make an effective representation guaranteed under Article 22(5) of the Constitution of India and, therefore, continued detention is illegal.

In the result, this petition is allowed. The impugned order of detention dated 9.1.1996 is quashed and set aside. The detenu Adodiya Lalitaben Bachubhai is directed to be set at liberty if her detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.
